

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:17-CV-10-FDW-DSC

UNITED STATES OF AMERICA and THE
STATES OF CALIFORNIA, COLORADO,
CONNECTICUT, DELAWARE, FLORIDA,
GEORGIA, HAWAII, ILLINOIS, INDIANA,
IOWA, LOUISIANA, MARYLAND,
MASSACHUSETTS, MICHIGAN,
MINNESOTA, MONTANA, NEVADA,
NEW HAMPSHIRE, NEW JERSEY, NEW
MEXICO, NEW YORK, NORTH
CAROLINA, OKLAHOMA, RHODE
ISLAND, TENNESSEE, TEXAS,
VERMONT, VIRGINIA, and
WASHINGTON, THE DISTRICT OF
COLUMBIA, THE COUNTY OF
ALLEGHENY, and THE CITIES OF
CHICAGO, NEW YORK, and
PHILADELPHIA, *ex rel.* JOHN DOE,

Plaintiffs,

v.

ATRICURE, INC., ST. HELENA
HOSPITAL, AND ADVENTIST HEALTH,

Defendants.

UNDER SEAL

**NOTICE OF ELECTION TO DECLINE INTERVENTION
AND MOTION TO UNSEAL COMPLAINT**

Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies the Court of its decision not to intervene in this action.

Although the United States declines to intervene, it respectfully refers the Court to 31 U.S.C. § 3730(b)(1), which allows a relator to maintain an action in the name of the United States; providing, however, that the “action may be dismissed only if the court and the Attorney General

give written consent to the dismissal and their reasons for consenting.” *Id.* Therefore, the United States requests that, should either the relator or the defendants propose that this action be dismissed, settled, or otherwise discontinued, the Court solicit the written consent of the United States before ruling or granting its approval.

Furthermore, pursuant to 31 U.S.C. § 3730(c)(3), the United States requests that all pleadings filed in this action be served upon the United States; the United States also requests that orders issued by the Court be sent to the Government’s counsel. The United States reserves its right to order any deposition transcripts, to intervene in this action, for good cause, at a later date, and to seek the dismissal of this relators’ action or claim. The United States also requests that it be served with all notices of appeal.

The Government requests that this relator’s Complaint, the Amended Complaint, the Second Amended Complaint, this Notice, and the attached proposed Order be unsealed. The United States requests that all other papers currently on file in this action remain under seal because in discussing the content and extent of the United States’ investigation, such papers are provided by law to the Court alone for the sole purpose of evaluating whether the seal and time for making an election to intervene should be extended.

Finally, the Government gives notice that the following States have elected to join this declination: California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Montana, North Carolina, New Hampshire, New Jersey, New Mexico, Nevada, New York, Oklahoma, Rhode Island, Tennessee, Texas, Virginia, Vermont, Washington, and the District of Columbia.

Of these, Maryland has directed that, because of particularities of that State’s false claims law, the Government convey that the Maryland False Health Claims Act provides that “If the State

does not elect to intervene and proceed with the action . . . before unsealing the complaint, the court shall dismiss the action.” Md. Code Ann., Health Gen, § 2-604 (a)(7). Accordingly, the State of Maryland requests that all claims asserted on behalf of the State of Maryland be dismissed without prejudice.

A proposed order accompanies this notice.

Respectfully submitted this the 15th day of March, 2021.

WILLIAM T. STETZER
ACTING UNITED STATES ATTORNEY

s// Katherine T. Armstrong
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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of March, 2021, the foregoing Government’s Notice of Election to Decline Intervention and Motion to Unseal Complaint was served upon the parties indicated below by depositing a copy, correctly addressed and postage prepaid, with the United States Postal Service:

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